

AMENDED IN SENATE AUGUST 19, 2016

AMENDED IN SENATE MAY 25, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2891

**Introduced by Committee on Environmental Safety and Toxic
Materials (Assembly Members Alejo (Chair), Arambula, Lopez,
and McCarty)**

February 29, 2016

An act to amend Sections 25173.7 and 25205.6 of the Health and Safety Code, relating to hazardous waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 2891, as amended, Committee on Environmental Safety and Toxic Materials. Hazardous waste: funding.

Existing law, the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Superfund Act), imposes liability for hazardous substance removal or remedial actions and authorizes moneys in the Toxic Substances Control Account in the General Fund to be expended by the Department of Toxic Substances Control to pay, among other things, all costs of removal or remedial actions incurred by the state and for the state's share of the costs of removal or remedial actions mandated by the federal Comprehensive Environmental Response Compensation, and Liability Act of 1980, commonly known as the Federal Superfund Act. Existing law expresses the intent of the Legislature that the funds deposited in the account be appropriated in the annual Budget Act each year in a specified manner, ~~including, but not limited to,~~ *including* not less than \$6,750,000 to the Site Remediation Account in the General Fund for direct site remediation costs, as defined.

Existing law defines orphan sites as those with no reasonably identifiable responsible parties.

This bill would instead express the intent of the Legislature that the funds deposited in the account be appropriated in the annual Budget Act each year to the Site Remediation Account in an amount *that is* sufficient to pay for estimated costs for direct site remediation, ~~including, but not limited to,~~ remediation at both federal Superfund orphan sites and at ~~state-only~~ state orphan sites. ~~Existing law defines orphan sites as those with no reasonably identifiable responsible parties. sites, and that not less than \$10,750,000 be appropriated in the annual Budget Act each year to the account for direct site remediation costs.~~ The bill would require the department to include those estimated costs in a report submitted to the Legislature with the Governor's Budget each year.

Existing law requires the department to provide the State Board of Equalization with a schedule of codes identifying the types of organizations that use, generate, store, or conduct activities in this state related to hazardous materials. Each organization type identified in the schedule is required to pay an annual fee, which is deposited in the Toxic Substances Control Account. Existing law expresses the intent that those organization fee rates are intended to provide sufficient revenue to fund, among other things, appropriations in any given fiscal year of \$3,300,000 to fund the state's clean-up obligation under the Federal Superfund Act. If the department determines that the state's obligation under the Federal Superfund Act will exceed \$3,300,000 in any fiscal year, existing law requires the department to report that determination to the Legislature in the Governor's Budget.

This bill would repeal that expression of legislative intent and a related requirement that the Legislature specify in the annual Budget Act changes to those rates necessary to fund the state's increased obligation under the Federal Superfund Act. The bill would instead express the intent of the Legislature that those rates are intended to provide sufficient revenue to fund appropriations in any given fiscal year to fund the state's obligation under the Federal Superfund Act. ~~The bill would require the department to determine the state's obligation under the Federal Superfund Act and to annually include the determination in the report described above that is submitted to the Legislature with the Governor's Budget.~~

This bill would also make conforming changes and delete obsolete provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 25173.7 of the Health and Safety Code is amended to read:

25173.7. (a) It is the intent of the Legislature that funds deposited in the Toxic Substances Control Account shall be appropriated in the annual Budget Act each year in the following manner:

(1) An amount sufficient to pay for the estimated costs identified by the department in the report submitted pursuant to subdivision (c) to the Site Remediation Account in the General Fund for direct site remediation costs, as defined in Section 25337.

(2) *Not less than ten million seven hundred fifty thousand dollars (\$10,750,000) to the Site Remediation Account in the General Fund for direct site remediation costs, as defined in Section 25337.*

~~(2)~~

(3) Not less than four hundred thousand dollars (\$400,000) to the Expedited Site Remediation Trust Fund in the State Treasury, created pursuant to subdivision (a) of former Section 25399.1, for purposes of paying the orphan share of response costs pursuant to former Chapter 6.85 (commencing with Section 25396).

~~(3)~~

(4) An amount that does not exceed the costs incurred by the State Board of Equalization, a private party, or other public agency, to administer and collect the fees imposed pursuant to Article 9.1 (commencing with Section 25205.1) and deposited into the Toxic Substances Control Account, for the purpose of reimbursing the State Board of Equalization, public agency, or private party, for those costs.

~~(4)~~

(5) Not less than one million fifty thousand dollars (\$1,050,000) for purposes of establishing and implementing a program pursuant to Sections 25244.15.1, 25244.17.1, 25244.17.2, and 25244.22 to encourage hazardous waste generators to implement pollution prevention measures.

~~(5)~~

(6) Funds not appropriated as specified in paragraphs (1) to ~~(4)~~; (5), inclusive, may be appropriated for any of the purposes specified in subdivision (b) of Section 25173.6, except the purposes specified in subparagraph (C) of paragraph (1) of, and paragraph (13) of, subdivision (b) of Section 25173.6.

(b) (1) The amounts specified in paragraphs (2) to ~~(4)~~; (5), inclusive, of subdivision (a) shall be adjusted annually to reflect increases or decreases in the cost of living during the prior fiscal year, as measured by the Consumer Price Index issued by the Department of Industrial Relations or by a successor agency.

(2) Notwithstanding paragraph (1), the department may, upon the approval of the Legislature in a statute or the annual Budget Act, take either of the following actions:

(A) Reduce the amounts specified in paragraphs (1) to ~~(4)~~; (5), inclusive, of subdivision (a), if there are insufficient funds in the Toxic Substances Control Account.

(B) Suspend the transfer specified in paragraph ~~(2)~~ (3) of subdivision (a), if there are no orphan shares pending payment pursuant to former Chapter 6.85 (commencing with Section 25396).

~~(c) (1) The department shall submit to the Legislature with the Governor's Budget each year a report that includes an estimate of the funding needed to fund direct site remediation costs at state orphan sites and meet the state's obligation to pay for direct site remediation costs, including, but not limited to, costs at federal Superfund orphan sites and at state-only orphan sites, pursuant to paragraph (3) of subsection (c) of Section 104 of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9604(c)(3)). The estimate shall include projected costs for the current budget year and out-year costs, the two following budget years, including, but not limited to, the state's 10-percent funding obligation at federal Superfund orphan sites and at state-only orphan sites, for new and ongoing operations and maintenance, new and ongoing remediation, and any other related costs, for remedial actions at federal Superfund orphan sites, the state's 100-percent funding obligation for ongoing operation and maintenance at federal Superfund orphan sites, and ongoing operation and maintenance costs at state orphan sites.~~

~~(2) For purposes of this section, "orphan site" shall have the same meaning as defined in Section 25385.1.~~

SEC. 2. Section 25205.6 of the Health and Safety Code is amended to read:

25205.6. (a) For purposes of this section, “organization” means a corporation, limited liability company, limited partnership, limited liability partnership, general partnership, and sole proprietorship.

(b) On or before November 1 of each year, the department shall provide the board with a schedule of codes, that consists of the types of organizations that use, generate, store, or conduct activities in this state related to hazardous materials, as defined in Section 25501, including, but not limited to, hazardous waste. The schedule shall consist of identification codes from one of the following classification systems, as deemed suitable by the department:

(1) The Standard Industrial Classification (SIC) system established by the United States Department of Commerce.

(2) The North American Industry Classification System (NAICS) adopted by the United States Census Bureau.

(c) Each organization of a type identified in the schedule adopted pursuant to subdivision (a) shall pay an annual fee, which shall be set in the following amounts:

(1) Two hundred dollars (\$200) for those organizations with 50 or more employees, but fewer than 75 employees.

(2) Three hundred fifty dollars (\$350) for those organizations with 75 or more employees, but fewer than 100 employees.

(3) Seven hundred dollars (\$700) for those organizations with 100 or more employees, but fewer than 250 employees.

(4) One thousand five hundred dollars (\$1,500) for those organizations with 250 or more employees, but fewer than 500 employees.

(5) Two thousand eight hundred dollars (\$2,800) for those organizations with 500 or more employees, but fewer than 1,000 employees.

(6) Nine thousand five hundred dollars (\$9,500) for those organizations with 1,000 or more employees.

(d) The fee imposed pursuant to this section shall be paid by each organization that is identified in the schedule adopted pursuant to subdivision (a) in accordance with Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code and shall be deposited in the Toxic Substances Control Account.

The revenues shall be available, upon appropriation by the

1 Legislature, for the purposes specified in subdivision (b) of Section
2 25173.6.

3 (e) For purposes of this section, the number of employees
4 employed by an organization is the number of persons employed
5 in this state for more than 500 hours during the calendar year
6 preceding the calendar year in which the fee is due.

7 (f) The fee rates specified in subdivision (c) are the rates for the
8 1998 calendar year. Beginning with the 1999 calendar year, and
9 for each calendar year thereafter, the State Board of Equalization
10 shall adjust the rates annually to reflect increases or decreases in
11 the cost of living during the prior fiscal year, as measured by the
12 Consumer Price Index issued by the Department of Industrial
13 Relations or by a successor agency.

14 (g) (1) Pursuant to paragraph (3) of subsection (c) of Section
15 104 of the federal Comprehensive Environmental Response,
16 Compensation, and Liability Act of 1980, as amended (42 U.S.C.
17 Sec. 9604(c)(3)), the state is obligated to pay specified costs of
18 removal and remedial actions carried out pursuant to the federal
19 Comprehensive Environmental Response, Compensation, and
20 Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.).

21 (2) The fee rates specified in subdivision (c) are intended to
22 provide sufficient revenues to fund the purposes of subdivision
23 (b) of Section 25173.6, including appropriations in any given fiscal
24 year to fund the state's obligation pursuant to paragraph (3) of
25 subsection (c) of Section 104 of the federal Comprehensive
26 Environmental Response, Compensation, and Liability Act of
27 1980, as amended (42 U.S.C. Sec. 9604(c)(3)).

28 ~~(3) The department shall annually determine the state's~~
29 ~~obligation under paragraph (3) of subsection (c) of Section 104 of~~
30 ~~the federal Comprehensive Environmental Response,~~
31 ~~Compensation, and Liability Act of 1980, as amended (42 U.S.C.~~
32 ~~Sec. 9604(c)(3)), and shall include the determination in the annual~~
33 ~~report submitted to the Legislature with the Governor's Budget~~
34 ~~specified in subdivision (c) of Section 25173.7.~~

35 ~~(4) Any changes in the fee rates approved by the Legislature in~~
36 ~~the annual Budget Act pursuant to this subdivision shall have effect~~
37 ~~only on the fee payment that is due and payable by the end of~~
38 ~~February in the fiscal year for which that annual Budget Act is~~
39 ~~enacted.~~

1 (h) This section does not apply to a nonprofit corporation
2 primarily engaged in the provision of residential social and personal
3 care for children, the aged, and special categories of persons with
4 some limits on their ability for self-care, as described in SIC Code
5 8361 of the Standard Industrial Classification (SIC) Manual
6 published by the United States Office of Management and Budget,
7 1987 edition.

8 (i) The changes made to this section by the act of the 2005–06
9 Regular Session of the Legislature amending this section shall not
10 increase fee revenues in the 2006–07 fiscal year.

O